

**Memorandum of Agreement
Between
The United States Army Corps of Engineers (Corps), and
The Utah State Historic Preservation Office (SHPO),
Regarding
Resolution of Adverse Effects for the Proposed
Wide Hollow Reservoir Project, Garfield County, Utah**

WHEREAS, the U.S. Army Corps of Engineers (Corps) has determined that the Wide Hollow Reservoir Project (Project) in the Town of Escalante, Garfield County, Utah will have an adverse effect upon the prehistoric archeology site 42Ga6264 which is eligible for the National Register of Historic Places and has consulted with the Utah State Historic Preservation Officer (SHPO) pursuant to the regulations (36 CFR PART 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the Advisory Council on Historic Preservation (ACHP) has been invited to participate in this Memorandum of Agreement (MOA), and

WHEREAS, the Hopi Indian Tribe of Arizona, the Ute Indian Tribe (Uintah & Ouray Reservation), and The Koosharem Band of Paiutes (collectively "Indian Tribes") have been contacted and afforded the opportunity to participate in the Section 106 process and will continue to be included throughout the process; and

WHEREAS, the Corps in consultation with SHPO has previously established the project Area of Potential Effects (APE) pursuant to 36 CFR §800.16(d) to consist of the reservoir pool and the immediately adjacent lands, and the associated dam construction area; and

WHEREAS, pursuant to 36 CFR §800.4(c), the Corps, in consultation with the SHPO has determined that archeology site 42Ga6264 is eligible for the National Register of Historic Places; and

WHEREAS, the Corps has consulted with the SHPO in accordance with 36 CFR §800.6(a-b) to resolve the potential adverse effects of the Project on archeology site 42Ga6264; and

WHEREAS, the Wide Hollow Water Conservancy District (WHWCD) wishes to engage in construction of the proposed reservoir in as expeditious a manner as possible;

NOW, THEREFORE, the Corps and SHPO agree that the Project shall proceed according to the following stipulations that will be implemented in order to take into account the effects of the Project on historic properties, and that these stipulations shall govern the Project and all of its parts until this Agreement expires or is terminated.

DEFINITIONS

Signatories are those parties who have the exclusive right to execute, amend or terminate an MOA.

Concurring Parties. Concurring means their concurrence indicates that they are in agreement with the terms of the MOA.

Consultant means the professional archaeologist.

STIPULATIONS

- I. The WHWCD, in consultation with the other parties to this agreement, will have a Historic Properties Treatment Plan (HPTP) produced for the Project by a professional archaeologist (Consultant) who meets the Secretary of the Interior's Standards (FR 44738-FR44739), and who holds a State of Utah Principal Investigator permit.

When data recovery is proposed, the Corps and WHWCD, in consultation with SHPO shall ensure that WHWCD's Consultant develops a data recovery plan that is consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation and the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeologist Sites" (ACHP May 18, 1999). Components to be included in data recovery plans are as follows:

- The historic properties or portions of historic properties where treatment will be implemented;
 - A research design that will contain the research questions and goals that are applicable to the Project area as a whole and that will be addressed through data recovery, along with an explanation of their relevance and importance.
 - The field and analysis methods to be used, with an explanation of their relevance to the research questions;
 - The methods to be used in data management and dissemination of data, including a schedule;
 - The proposed disposition of recovered materials and records;
 - Methods and procedures for the recovery, analysis, treatment, and disposition of human remains, associated grave goods, and objects of cultural patrimony that reflect any concerns and/or conditions identified as a result of consultations between the Corps and any affected Native American Group (see Stipulation II);
 - The historic properties to be affected in the specified Project segment and the nature of those effects;
 - The research questions identified in the HPTP that will be appropriate for the specified Project and that will be addressed through data recovery, along with any explanation of their relevance to the overall research goals as established in the HPTP;
- II. The HPTP will refer to procedures to be followed upon discovery of human remains consistent with the State of Utah Native American Grave Protection and Repatriation Act (Utah Code 9-8-401 *et seq.*).

- III. The Corps will provide the draft HPTP to the SHPO and the Indian Tribes for 30 days of review. If SHPO or the Indian Tribes do not respond within 30 days of receipt, the Corps can consider that all parties concur with the HPTP. If the SHPO or any of the Indian Tribes respond with comments on the HPTP, the Corps will consult with the entity providing the comments in a timely manner to resolve the matter.
- IV. Once a final HPTP is approved by Corps and SHPO, the Corps and WHWCD will be responsible for ensuring that the stipulations of the HPTP, including post-field analysis, and final report production are implemented.
- V. A draft version of the final report presenting all aspects of the HPTP for 42Ga6264 sites will be provided by WHWCD to the Corps, the SHPO and the Indian Tribes for 60 days of review. If the SHPO or any of the Indian Tribes do not respond within 60 days of receipt, the Corps and WHWCD can consider that they concur with these reports. If the SHPO or any of the Indian Tribes respond with comments on the final report(s), the Corps and WHWCD will consult with the responding party(s) in a timely manner to resolve the comments.
- VI. The completed and finalized report will be submitted by WHWCD and the Corps to the SHPO, and the Indian Tribes.
- VII. If potentially National Register eligible cultural resources are discovered during construction, ground disturbing activities will cease until the provisions of 36 CFR 800.13(b), Discoveries without prior planning, are met. The Corps will provide the SHPO and the Council an opportunity to review and comment on the proposed HPTP. The Corps will contact the SHPO by facsimile machine, telephone, and/or email within 48 hours of the discovery. The SHPO has 48 hours to respond by facsimile machine, telephone, and/or email following initial contact by the Corps.
- VIII. Any Signatory to this MOA can propose to terminate the MOA so long as they notify the other signatories, explain the reasons for termination, and afford other Signatories at least 30 days to consult in accordance with 36 CFR 800.§6(c)(8) and seek alternatives to termination.
- IX. Effective Date: This MOA shall take effect on the date that it has been fully executed by the Corps and the SHPO.
- X. This MOA shall be considered to be in effect until either it is terminated or all of its stipulations have been met.

EXECUTION of this MOA by the Corps, and the SHPO, its transmittal to the ACHP, and subsequent implementation of its terms evidence that the Corps has afforded the ACHP an opportunity to comment on the Project and its effects on historic properties, that the Corps has taken into account the effects of the Project on historic properties, and that the Corps has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and applicable implementing regulations for all aspects of the Project.

Signatories:

UNITED STATES ARMY CORPS OF ENGINEERS

By: FW [Signature] LTC, OOL
Thomas C. Chapman, Colonel, U.S. Army Corps of Engineers, District Engineer

Date: 8 JAN 2010

UTAH STATE HISTORIC PRESERVATION OFFICER

By: [Signature]
Wilson G. Martin, State Historic Preservation Officer

Date: 26 Jan 2010

Concurring Parties:

WIDE HOLLOW WATER CONSERVANCY DISTRICT

By: _____
Glen Wilson, President

Date: _____

HOPI INDIAN TRIBE OF ARIZONA

By: _____

Date: _____

KOOSHAREM BAND OF PAIUTES

By: _____

Date: _____

UTE INDIAN TRIBE (UINTAH & OURAY RESERVATION)

By: _____

Date: _____